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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1979

No. 79-6281

In Re: Adoption of E. M. A.
Georgia Dixon, Petitioner-Appellant

ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

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ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

Jurisdictional Statement

The appellant-petitioner in the court below respectfully appeals from the judgment of the Supreme Court of Pennsylvania entered on December 21, 1979, affirming a judgment of The Court of Common Pleas of Allegheny County, upholding the constitutionality of the Pennsylvania Adoption Act.

Opinions Below

The unreported opinion and order of The Court of Common Pleas of Allegheny County, Pennsylvania, dated January 11, 1979, dismissing appellant's Petition for Adoption, is set forth beginning at Page 1a of the Appendix filed herewith.

The opinion and judgment of The Supreme Court of Pennsylvania, affirming the judgment of the lower court, is set forth beginning at Page 11a of the Appendix, and are reported at ___ Pa. ___, 409 A.2d 10 (1979).

Jurisdiction

The judgment of The Pennsylvania Supreme Court affirming the decision of The Court of Common Pleas of Allegheny County was entered on December 21, 1979 (A. 16a). The jurisdiction of The Supreme Court of the United States is invoked pursuant to 28 U.S.C. §1257(2). Cases supporting the jurisdiction of this Honorable Court include:

Meyer v. Nebraska, 262 U.S. 310 (1925)

Griswold v. Connecticut, 381 U.S. 479 (1965)

Roe v. Wade, 410 U.S. 113 (1973)

Pierce v. Society of Sisters, 268 U.S. 510 (1924)

May v. Anderson, 345 U.S. 528 (1953)

Stanley v. Illinois, 405 U.S. 645 (1972)

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Levy v. Louisiana, 391 U.S. 68 (1968)

Webster v. Aetna Casualty and Surety Company, 406 U.S. 164 (1972)

Jimenez v. Weinberger, 417 U.S. 628 (1974)

Statutory Provisions Involved

Title I, §503 of the Pennsylvania Consolidated Statutes Annotated provides:

> "Whenever a parent consents to the adoption of his child by his spouse, the parent-child relationship between him and his child shall remain whether or not he is one of the petitioners in the adoption proceeding."

The fourteenth amendment to the Constitution of the United States, U.S.C.A. Const. Amend. 14 §1 provides:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Question Presented for Review

1. Does the Pennsylvania Adoption Act, which has been interpreted to deny an unmarried father the right to retain his parental rights while consenting to the adoption of his daughter by her unmarried guardian who is not his wife, violate the fourteenth amendment to the Constitution of the United States by denying due process and equal protection of the laws?

Statement of the Case

In 1978, appellant commenced proceedings below pursuant to the Pennsylvania Adoption Act, the Act of July 24, 1970, P.L. 620, No. 208, Art. 1, Section 101 et seq., 1 Pa. C.S.A. §101 et seq. (Supp. 1964-1978), to adopt her ward, E.M.A.

The brief liaison of E.M.A.'s unwed natural black father and white mother ended prior to her birth in 1971. Shortly thereafter, E.M.A.'s father placed her in appellant's care. Although E.M.A.'s father and appellant were never married, appellant is the mother of his son, E.M.A.'s half-brother, who is six months younger than E.M.A.

In 1973, with the consent of E.M.A.'s father and mother, and after opportunity of hearing, the Court of Common Pleas appointed appellant as E.M.A.'s guardian. At the same time, appellant and the father entered into an agreement concerning the father's support of the children. Although E.M.A.'s father does not live with her, her black guardian and half-brother, he has supported his children during periods when he has been employed and exercises his visitation rights. Both children use his surname in the community. Both children look upon appellant as mother, although she is the natural mother of the little boy only.

In 1978, Petitioner commenced proceedings in the Court of Common Pleas of Allegheny County to adopt E.M.A. because she wished to legalize the de facto mother/daughter relationship which exists between them. The Adoption Department, the agency designated by the court under §424 of the Adoption Act to investigate adoption cases, refused to approve the proposed adoption for consideration by the court on the grounds that appellant had not secured the unqualified consent of E.M.A.'s father to the adoption.

At a hearing on exceptions to the Adoption Department's refusal to approve the petition, appellant filed a brief and argued orally to the court that she fell within the exception, under §503 of the Adoption Act, to the normal requirements of unqualified consent of the natural parents

to the adoption under §411 or the termination of parental rights by court order after hearing under §§311, 313 and 414.

Section 503 allows a parent to consent to the adoption of the parent's child by the parent's spouse without terminating the parent-child relationship. Even though appellant was not married to E.M.A.'s father, he had consented to E.M.A.'s adoption by appellant while reserving his parental rights. Appellant argued that to deny her petition for lack of consent because she was not married to E.M.A.'s father discriminated against her on the basis of marital status, and deprived E.M.A. of her rights based on the marital status of adults, both in violation of the due process and equal protection clauses of the fourteenth amendments. (Appellant's brief in the Court of Common Pleas at Pages 3, 4 and 5).

The Court of Common Pleas denied E.M.A.'s father's request to give his qualified consent to her adoption under §503 of the Act, thus banning the presentation of the petition to the court.

On appeal to the Pennsylvania Supreme Court, appellant again sought to bring herself with the §503 exception, or, if that was not possible, argued the unconstitutionality of §503 and its application in this case under the fourteenth amendment. (Petitioner's brief in the Supreme Court of Pennsylvania at Pages 2, 12, 13 and 14). The Pennsylvania Supreme Court found "no constitutional infirmity in the legislative judgment contained in §503" (A. 15a, ___ Pa. ___, 409 A.2d 10 at 12 (1979) and affirmed the decree of the lower court.

Questions Involved Are Substantial

This case presents substantial federal questions involving constitutional rights in freedom of association and privacy within the context of the parent-child relationship, familial relations, and statutory adoption proceedings.

This case also involves fourteenth amendment issues concerning a child's right to be free from the burden of unreasonable, arbitrary and capricious classifications based on the marital status of adults.

---

1. The Pennsylvania Supreme Court's interpretation of §503 of the Pennsylvania Adoption Act violates the due process and equal protection guarantees of the fourteenth amendment by infringing upon freedom of association and privacy in family matters.

A. The Interpretation Violates Due Process.

The Pennsylvania Supreme Court has determined that a natural, unwed father cannot consent to the adoption of his daughter, who has been abandoned by her natural, unwed mother, by the child's court-approved guardian/de facto mother without surrendering his own parental rights in the process. This decision violates his fundamental freedom of association because it denies him the right to make practical decisions concerning the upbringing of his child and the right to seek a court hearing and decision to effectuate them. In a line of decisions stretching from 1925 in Meyer v. Nebraska, 262 U.S. 310, this court has protected and defended parents' rights to make decisions which will fundamentally affect the birth, education and rearing of their children, Griswold v. Conn., 381 U.S. 479 (1965); Roe v. Wade, 410 U.S. 113 (1973); Pierce v. Society of Sisters, 268 U.S. 510 (1924); May v. Anderson, 345 U.S. 528 (1953); Stanley v. Illinois, 405 U.S.645 (1972); Moore v. City of East Cleveland,431 U.S. 494 (1977). Here the Pennsylvania Supreme Court has decided that a natural father is without

the power to remain as father while consenting to his child's adoption by a woman who is not his wife but who is the only mothering influence the child has ever known. The trial court, whose decision the Pennsylvania Supreme Court affirmed, never considered appellant's petition for adoption on its merits; the Adoption Department refused to process the petition for the trial court's consideration because the father's consent, qualified by the retention of his own parental rights, was deemed insufficient and fatally defective to the petition solely because he was not married to appellant, the petitioner in the adoption proceeding.

The Pennsylvania Supreme Court's decision unconstitutionally restricts the freedom which lies inherently with a parent to make decisions fundamentally affecting his child's welfare. Just as in Boddie v. Connecticut, 401 U.S. 371 (1970), where this Honorable Court held that due process required unfettered access to the only forum in which the fundamental marital relationship could be adjudicated, this case requires that E.M.A's father's consent to her adoption cannot bar his access to the court, the only forum which can create the fundamental parent-child relationship between E.M.A. and appellant, the woman he wishes to become E.M.A.'s mother but not his wife.

The Pennsylvania Supreme Court's decision also violates fundamental rights to privacy and freedom of choice in family life. The "style" of family life here sought to be created is not unlike many "divorced" or "separated" American families. But the Act has been interpreted to mean that E.M.A.'s father may retain his parental rights and secure a mother for her only in the context of a "step-parent" adoption, i.e. only if he is willing to create a husband-wife relationship and a conventional nuclear family.

While this may indeed be the solution commonly found in white suburban and rural areas-- a nuclear family broken by death or divorce will be remolded into another nuclear family--in much of the black, urban population, the nuclear family is not so commonly rejuvenated. E.M.A.'s father is absolutely precluded from effectuating his decision that appellant should become E.M.A.'s mother but not his wife. His daughter can secure a mother only if he takes a wife. Such restraints on the manner in which individuals structure their most fundamental relationships, husband/wife, parent/child, family association, have been consistently disfavored by this court. Loving v. Virginia, 388 U.S. 1 (1967); Zablocki v. Redhail, 434 U.S. 374 (1978); Stanley v. Illinois, 405 U.S. 645 (1972); Moore v. City of East Cleveland, 431 U.S. 494 (1977).

B. The Interpretation Violates Equal Protection.

This case deals with fundamental rights of freedom of association and privacy within family life. Where fundamental rights are involved, this court has consistently applied the strict scrutiny test to determine a statute's constitutional validity. The Pennsylvania Adoption Act as interpreted by the Commonwealth's highest court fails that test. The state has a fundamental interest in providing for the welfare of children who have been abandoned, orphaned or are otherwise without a wholesome, stable and affectionate parent/child relationship. The decision here absolutely precludes the achievement of that objective. The objective of the Adoption Act is not the creation of the husband-wife relationship or the nuclear family; rather, it is the establishment of the parent/child relationship. Yet the decision of the Adoption Department and of all of the Judges in this case has made the creation of the former relationship a prerequiste to the establishment of parent-child relationship between appellant and E.M.A. The decision has effectively vetoed the only stable mother-child relationship E.M.A. could ever have. A complete stranger to E.M.A. could marry E.M.A.'s father and have an adoption petition like

that here considered while the only woman who has been de facto mother to E.M.A. cannot. The establishment of the parent-child relationship is conditioned on the pre-existence of a marital relationship.

What fundamental freedoms does the classification endanger? The harm to the freedoms of association and privacy have been discussed above. Additionally, appellant's and E.M.A.'s father's freedom to marry is also affected: they cannot remain unwed and secure the parent-child relationship each seeks with E.M.A. As long as they remain unmarried, E.M.A. can have a father but no mother. The court's ruling means that unless the adults consent to become marital partners, they cannot consent to become parents. Yet the reverse was held to be unconstitutional in Zablocki v. Redhail, 434 U.S. 374 (1978). There, the court held unconstitutional a Wisconsin statute that required a man to be a good father before he could become a good husband. Here a man must be a good husband before he can see his child enjoy a good mother. There, the court held the freedom to marry to be too fundamental to be restricted by a statute which could achieve its objective in a manner which infringed such rights far less. Here the court has refused to fulfill the statute's objective by infringing on the fundamental right to marry.

The state cannot require the establishment of the husband and wife relationship here as the quid pro quo for simultaneously establishing and maintaining the parent/child relationship anymore than Wisconsin could require the maintenance of parental obligations as a condition precedent to the undertaking of marital ones.

Even if the Pennsylvania statute were not held to the strict scrutiny test, it would fail on equal protection grounds because its classification scheme bears no rational basis to the state's objective, the creation of the parent/child relationship. If the father wants Georgia Dixon to be his daughter's mother, he can do one of two things: he can marry her, which he does not want to do, or he can completely sever his parental ties with E.M.A. and thereafter hope that the court will

allow his daughter to be adopted by Georgia Dixon. (Indeed, having severed his parental ties, nothing on the statute's face would preclude him from joining with Georgia Dixon as a petitioner). Either choice requires him to surrender a fundamental freedom--to marry or to rear his child. The middle course--consenting to her adoption by the only "mother" she has ever known while remaining as father--is forever foreclosed under the statute. Surely, it was this middle ground that the Pennsylvania legislature sought to achieve in §503 of the Act. Equal protection requires just as surely that the classification thus achieved should not be interpreted to infringe on fundamental freedoms.

2. The Pennsylvania Adoption Act as interpreted by the state's highest court denies E.M.A. due process and equal protection.

A. The Interpretation Denies E.M.A. Due Process.

All that has been said above about freedom of association and privacy within the family applies equally to the little girl involved here, E.M.A. She is entitled to have her father determine how she can best be reared. Just as the little grandson in Moore v. City of East Cleveland, 431 U.S. 494 (1977) had an interest in being raised in his grandmother's home without regard to his degree of consanguinity, E.M.A. has an interest in her father's ability to consent to her adoption which he believes will be in her best interest.

B. The Interpretation Denies E.M.A. Equal Protection.

E.M.A. has no constitutional right to be adopted. Therefore, the strict scrutiny test cannot be applied to the classification here. However, the classification in §503 must be reasonably related to the state's objective--the creation of the parent-child relationship. The classification here is based on the marital status of the adults interested in the adoption; a complete stranger married to E.M.A.'s father could petition the court to adopt her more readily than Georgia Dixon can. Indeed, the father may not want any wife he might take to become E.M.A.'s

mother because of the disruptive effect that might have on E.M.A.

In a long line of cases, this court has refused to allow children's statutory rights to be abridged because of the marital status of adults. In Trimble v. Gordon, 430 U.S. 762 (1977) a classification blocking an illegitimate daughter's right to inherit from her father was struct down because it was based on the marital status of adults--something over which the child had absolutely no control and which was not rationally related to the state's interest in orderly intestate distribution. In Levy v. Louisiana, 391 U.S. 68 (1968) an illegitimate's statutory right to sue for the wrongful death of the child's mother could not be abridged solely on the mother's marital status. Because the son's statutory rights to inherit were not based solely on marital status but on a legitimization procedure wholly apart from it, the result was different in Lalli v. Lalli, ___ U.S. ___, 99 S.Ct. 518 (1978). Nor could children's statutory rights be classified based on the marital status of adults in Webster v. Aetna Casualty and Surety Company, 406 U.S. 164 (1972) or Jimenez v. Weinberger, 417 U.S. 628 (1974).

Barring the adoption in this case because the adults involved have not created a relationship with each other but ardently wish to create an intimate relationship with the child is irrational. E.M.A. can have a father or this mother but not both. As long as her father remains her unmarried father, she can never have a mother, much less this mother. If her father gives her up and she becomes an orphan, then she has an opportunity to gain a mother, maybe even this mother--but then again, maybe not. The Pennsylvania Supreme Court has presented her with a Solomonesque choice, one that equal protection does not require her to make.

Conclusion

For the above reasons, it is respectfully requested that this Honorable Court review the order of the Supreme Court of Pennsylvania.

Respectfully Submitted:

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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION

IN RE: ADOPTION OF)
E. M. A.) No. 368 of 1977

Before: Zavarella, A.J., Eunice Ross and Rahauser, JJ.

OPINION

Eunice Ross, J.

The issue before the Court is whether E.M.A.'s natural father, who has never been and is not married to the sole female petitioner seeking to adopt the minor child, may consent to the adoption while reserving his rights as natural father. The adoptor in this case is willing for him to do so.

The father argues that the established public policy of the Commonwealth is that children should, where possible, have two parents and children should not be deprived of their biological fathers if they are interested in their children.

It is also argued that the case falls within Section 503 of the Adoption Act of July 24, 1970, P.L. 620, 1 P.S. 503, which provides:

> "Whenever a parent consents to the adoption of his child by his spouse, the parent-child relationship between him and his child shall remain whether or not he is one of the petitioners in the adoption proceeding" [emphasis supplied].

Even though the natural father is not married to the sole and female petitioner, he argues that Section 503 of the Adoption Act, supra, 1 P.S. 503, permits retention of one natural parent when a person of the opposite sex is adopting. "Spouse", he argues, is used only incidentally and was not intended to apply solely to the step-parent adoption. Rather, he argues it was intended to ensure, where possible, that each child would have two parents.

He also argues that as the father of a child born out of wedlock, his rights had not been clearly fixed at the time of the passage of the 1970 statute but that Stanley v. Illinois, 405 U.S. 465, established his parental rights. He takes the position that the statute in violation of the Equal Protection Clauses of the Federal and Pennsylvania Constitution gives more rights to the natural parent who is married to the petitioner than to the natural parent who is not married to the mother. He cites cases striking down classifications based on whether or not a person was married which indicate such classification is unconstitutional in the absence of a compelling state interest: Cleveland Board of Education v. La Fleur, 414 U.S. 632, 639; Eistenstat v. Baird, 405 U.S. 438, 454; Glona v. American Guarantee and Liability Insurance Company, 391 U.S. 73, 76; Loving v. Virginia, 388 U.S. 1, 2. Also referred to is a Pennsylvania case striking down a welfare assistance requirement of a one-year residence in Pennsylvania as a denial to welfare recipients of their fundamental right to travel: Shapiro v. Thompson, 394 U.S. 618, 629-631.

The issues thus raised are (1) whether Pennsylvania has a legitimate state interest in permitting a parental consent reserving past parental rights only in the case of a step-parent adoption and (2) is this state interest so compelling it may override

the rights of the parent who is not married to the petitioner, a single person of the opposite sex.

Since it was unknown at common law, adoption is a statutory creation and the legislative provisions must be strictly complied with: Gunther Adoption Case, 416 Pa. 237, 240. Under the newly enacted adoption statute it has been held that the consent of the natural parent to a non-step-parent adoption must be "clear and unequivocal" or unqualified or the adoption will be invalid: Singer Adoption Case, 457, Pa. 518, 523: Act of July 24, 1970, supra, §411, 1 P.S. 411. A conditional consent indicating the parent does not intend to give up parental rights is statutorily insufficient: Singer Adoption Case, supra, 524.

The Court in the Singer case in denying the father the right to a qualified consent did not consider the constitutional issues now before the Court nor did the case involve the adoption of a child by a single person of the opposite sex from the parent. The Court will consider whether these additional factors require a different decision in the case at hand. In its deliberation the Court will be mindful that adoption as a statutory creature depends upon the legislative mandate which can be altered only if grave constitutional questions require judicial amendment.

A valid adoption creates a new status for the adoptee making him or her the child of the petitioner or petitioners: Harvey Adoption Case, 375 Pa. 1, 3-4. Adoption used to sever the child completely from the old family tree and engrafted it on that of its new parentage: Harvey Adoption Case, supra, 4; Southard Adoption Case, 358 Pa. 386, 392; Schwab Adoption Case, 355 Pa. 534, 536.

The new Probate, Estates and Fiduciaries Code, Act of June 30, 1972, P.L. 508, §§2108. 2514(7) and 6114(4), 20 P.S. 2108, 2514(7) and 6114(4), somewhat blurs the family lines for purposes of inheritance and conveyances. These sections indicate the adoptee still retains status in the natural family if the "natural kin other than the natural parent ... has maintained a family relationship with the adopted person". As to the adoptive family "wills and conveyances of persons other than the adopting parent shall be interpreted as if the adoptee was not a member of the adopting family" unless the adoption occurred during the adoptee's minority or reflected an earlier parent-child relationship existing during the child's minority.

But even though the family trees now may be intermixed somewhat after adoption it is clear that the Code excludes the natural parent who has been cut off by adoption regardless of his or her subsequent family relationship with the adoptee and always includes the adopting parent whether the adoptee was adopted during minority or adulthood.

It might now be said that the cases holding that a new family is created by adoption are modified by the Code provisions and that the current legislative intent is to create a new parentage rather than a new family in all cases other than the step-parent adoption. The family relationship becomes a question of fact not law while the parentage remains as before a question of law in that in situations other than an adoption by the natural parent's spouse, the natural parent is severed from the adoptee: Adoption of Hillman, 38 Erie 152, 155.

Returning to the constitutional issue, the Court now considers whether the rule as to the natural parent's severance from the

a should be eroded further in the situation where a single person of the opposite sex is the sole adopting parent.

Under the new act, the right of a single person not necessarily married to the natural parent is set forth in Section 212, Act of July 24, 1970, supra, 1 P.S. 212. At one time there was some question whether as a matter of public policy the Court should permit a single person (not married to the natural parent or related to the adoptee) to be the sole adoptor, but the question was resolved by giving close scrutiny to the single unrelated petitioner at the final stages of the adoption process when it was determined whether or not the welfare of the adoptee would be promoted by the adoption: Act of April 4, 1925, P.L. 127, §4,1P.S. 4.

At any event, the new act clearly establishes the right of a single, unrelated person regardless of his or her sex to adopt if he or she secures the requisite consents and if the Court finds the adoption to be desirable: Act of July 24, 1970, supra, §§212 and 424, 1 P.S. 212 and 424. The legislative public policy indicates that there is nothing inherently undesirable in one-parent families which may also exist by reason of divorce, separation or death as well as by adoption.

It may be suggested that in the case of separated or divorced parents, the child still may have two parents of the opposite sex and the rights and duties of the separated parent remain intact unless cut off by adoption or otherwise. It is also suggested that in the instant case the adoptor has no desire to cut off the rights and duties of the natural father and therefore he should be permitted to consent conditionally to the adoption while retaining his rights.

But suppose the single petitioner were unwilling that the father retain his rights and obligations? If we hold that every child, where possible, is entitled to two parents of the opposite sex, does this also mean the Court would not allow a single petitioner of the same sex ever to adopt or should the Court allow a qualified consent by the natural parent in the case of an unwilling single petitioner of the opposite sex thereby confronting such petitioner with problems of custody and visitation which are obviated when the consent is unqualified? The qualified consent where petitioner and natural parent are married is logical because the couple live or have lived in a family relationship. But a single petitioner and the parent do not have such a relationship and in general never had.

If the sole petitioner were of the same sex as the natural father, the father could not raise the issue of giving unqualified consent even though the child might be without a mother after adoption. Why should the sole petitioner be discriminated against because he or she happens to be of the opposite sex from the natural parent who wants to retain his or her rights? It is not reasonable to deny the right of a single person to adopt nor is it reasonable to allow such right only if there is a natural parent of the opposite sex who will consent but retains his or her rights as parent. Unreasonable classifications based on sex violate the Equal Rights Amendment of the Pennsylvania Constitution: Article I, §28.

If this Court would enhance the right of the unmarried natural parent to preserve his parental rights in the single, opposite sex petitioner adoption, it would do so by encroaching on the right of such single person to secure an unqualified, unconditional adoption not subject to ties to a parent with whom

the single adoptor never in most instances had a family, marital or other relationship. Even if such relationship existed, as where a grandparent petitions, why should the relationship be continued? There is no overriding state interest requiring it.

There is no compelling reason to give a single adoptor unrelated to the natural parent of the opposite sex fewer rights than the single adoptor of the same sex or a married couple adopting a child. The single adoptor seeks to be the parent of the child with the parentage clearly defined just as do the married adopting pair or the single, same-sex adoptor. There is no compelling reason to strip the single adoptor of his or her rights to an unconditional adoption. Such a classification based upon whether or not the single adoptor is of the same sex as the parent or was married to the natural parent or related to the adoptee is unreasonable. Since single, unrelated adoptors are constitutionally protected as a reasonable classification, there is no purpose in eroding the absolute nature of the adoption in the instance of an occasional adoptor of the opposite sex who is willing to let the natural father retain his rights. The adoptor may after the absolute consent and adoption still permit the parent to see the child. The parent may still support the child. But if either wish support or custody to be legally enforceable, then an adoption should not be sought but rather a determination of permanent custody.

The Court finds that to permit the natural father to consent conditionally to an adoption where there is only one adoptor of the opposite sex who is not the spouse of the father would erode unconstitutionally the right of the single, unrelated adoptor to an unqualified adoption severing the child from its former parentage. This finding of the creation of new parentage without

ties to the old (except in the step-parent adoption) is legislatively sanctioned by the Probate, Estates and Fiduciaries Code, supra, §§2108, 2514(7) and 6114(4), 20 P.S. 2108, 2514(7).

There is no compelling reason to override the unconditional right to adopt of a single adoptor in favor of a natural parent of the opposite sex who is not the adoptor's spouse. If the father wishes to retain his right he cannot qualifiedly consent to this adoption. A single petitioner of the opposite sex should not have fewer rights than a single petitioner of the same sex or a married couple as petitioners.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION

IN RE: ADOPTION OF)
E. M. A.) No. 368 of 1977
)

Before: Zavarella, A.J., Eunice Ross and Rahauser, JJ.

ORDER OF COURT

AND NOW, this 11th day of January, 1979, after argument on the request of the natural father of E.M.A. to consent conditionally under Section 503 of the Act of July 24, 1970, P.L. 620, 1.P.S. 503, to the adoption of his child by a female adoptor to whom the natural father is not married but who is willing to allow such consent,

The Court finds that Section 503 relates only to the instance where the petitioner and natural parent are married, that to hold that it also relates to the situation where the single petitioner and parent are unmarried but of opposite sex would constitutionally deprive the single adoptor of the opposite sex of rights a single adoptor of the same sex or a married couple petitioning could have, that such classification would be unreasonable and that there is no over-riding state interest which would compel a single petitioner of the opposite sex to retain the natural parent of the opposite sex as a parent after adoption when such is not required of married petitioners or a single petitioner of the same sex as the parent,

Therefore, it is ORDERED, ADJUDGED and DECREED that the request of the natural father for leave to consent under Section 503 of the Act of July 24, 1970, supra, 1 P.S. 503, is hereby denied.

Per Curiam,

Ervin Rood, J. J.

I concur:

J.

[265]

IN THE SUPREME COURT OF PENNSYLVANIA
Western District

IN RE: ADOPTION OF E.M.A.	: No. 7 March Term, 1979
Appeal of Georgia D., Appellant	: Appeal from the Decree dated January 11, 1979, of the Court of Common Pleas of Allegheny County, Pennsylvania, Orphans' Court Division, at No. 368 of 1977.

OPINION OF THE COURT

ROBERTS, J.

FILED: DEC 21 1979

The issue presented is whether appellant, not the spouse of the natural father, may become an adopting parent of his child, when the father gives only "qualified" consent, specifically retaining his parental rights. Our Adoption Act requires, as a prerequisite to adoption, inter alia, either the unqualified consent of natural parents under section 411, or the termination of their parental rights under sections 302 or 311.[1] Susko Adoption Case, 363 Pa. 78, 69 A.2d 132 (1949). The only provision for a qualified consent is contained in section 503:

> "Whenever a parent consents to the adoption of his child by his spouse, the parent-child relationship between him

1. Act of July 24, 1970, P.L. 620, 1 P.S. §§ 101 et seq. (Supp. 1978). See § 411 (consents necessary to adoption); §§ 301-303 (voluntary relinquishment of parental rights); § 311 (involuntary termination).

and his child shall remain whether or not he is one of the petitioners in the adoption proceeding."[2]

The orphans' court denied appellant's petition for adoption holding that the consent given by the natural father did not meet the statutory requirements for adoption by a non-spouse. We affirm.

Appellant seeks to adopt E.M.A. who was born on April 23, 1971. The child's natural parents never married. The natural mother, who has had no contact with E.M.A. for several years, consented to her adoption by appellant. The natural father, as already stated, executed only a qualified consent, retaining his parental rights. Appellant contends that even though she is not the spouse of the child's father, and has only his qualified consent, she is nevertheless entitled to be an adopting parent under section 503.

By its express terms, section 503 is clearly limited to adoption by the spouse of a natural parent. This statutory provision is available only in private or family adoptions, upon the marriage or remarriage of the natural father or mother. Only in such intra-family adoptions may a natural parent execute a valid consent retaining parental rights.[3] And only in such a husband-wife relationship is the qualified consent legally sufficient for the spouse seeking to become an adopting parent.

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2. Id., § 503.

3. "Private" or "family" adoptions, in which a natural parent marries a prospective adopting parent, comprise the vast majority of adoptions in Pennsylvania.

Adoption is a purely statutory right unknown at the common law. To effect an adoption, the legislative provisions of the Adoption Act must be strictly complied with. Schwab Adoption Case, 355 Pa. 534, 50 A.2d 504 (1938); Gunther Adoption Case, 416 Pa. 237, 206 A.2d 61 (1965). Our courts have no authority to decree an adoption in the absence of the statutorily required consents. Nor may exceptions to the Adoption Act be judicially created where the Legislature did not see fit to create them.

Appellant, though she is not a spouse, seeks to avail herself of an exclusive intra-family provision legislatively reserved only for spouses of consenting parents. Appellant's contention requires that "spouse" in section 503 be read as though the Legislature used "spouse" to mean non-spouse.[4] Such a construction of section 503 is tantamount to rewriting the legislative direction. To do so would be an unwarranted and impermissible judicial intrusion into the exclusive legislative prerogative.

In the alternative, appellant claims that section 503 is unconstitutional as applied because it discriminates against unmarried persons who wish to adopt.[5] This claim is meritless. Appellant's constitutional challenge must meet the "stringent burden" of establishing

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4. "Spouse" is defined in Black's Law Dictionary, as "one's wife or husband."

5. United States Constitution, Fourteenth Amendment (equal protection clause); Pennsylvania Constitution, art. 1, §§ 1, 26.

that the statute "clearly, palpably and plainly violates the Constitution," In re William L., 477 Pa. 322, 329, 383 A.2d 1228, 1231 (1978)(citing cases).

It should be noted that the Adoption Act in no way precludes an unmarried person from adopting a child. Section 212 of the Act states that "[a]ny individual may become an adopting parent."[6] Married or unmarried persons, male or female, may adopt so long as they secure either the requisite unqualified consents or decrees of involuntary termination and meet the other provisions of the Adoption Act. Appellant could be eligible to adopt if she offered the orphans' court either full consents of both parents or proper decrees of termination of parental rights. But here appellant has only a section 503 qualified consent of the natural father. Since appellant is not the spouse of the natural father, a section 503 consent is not sufficient to meet the eligibility requirements for an adopting parent.

It is the legislative judgment and mandate that a section 503 qualified consent be available only to the spouse of a natural parent. Given the state's traditional authority and longstanding interest in the family, it must be obvious that section 503 is a proper reflection of the legislative judgment and public policy of the Commonwealth concerning the intra-family aspects of Pennsylvania's comprehensive adoption act. It is appropriate and entirely reasonable for the

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6. Act of July 24, 1970, 1 P.S. § 212 (1978 Supp.).

legislature to provide, as section 503 does, a special type of consent available only where there is a husband-wife relationship. So too it is not unreasonable to require non-spouses to comply with the unqualified parental consent provisions. Manifestly, our courts are without authority to ignore or alter the consent provisions of the Adoption Act.

We find no constitutional infirmity in the legislative judgment contained in section 503. Accordingly, the decree of the orphans' court denying the adoption is affirmed.

Decree affirmed. Each party pays own costs.

Justice MANDERINO did not participate in the decision of this case.

SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

IN RE: ADOPTION OF EMA -

Appeal of GEORGIA DIXON : NO. 7 MARCH TERM, 1979

JUDGMENT

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of COMMON PLEAS OF ALLEGHENY COUNTY, Orphans' Court Div., be, and the same is hereby affirmed. Each party pay own costs.

BY THE COURT:

Sally Mavos

Sally Mavos, Esquire
Prothonotary

Dated: Dec. 21, 1979

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

IN RE: ADOPTION OF EMA	)	
	)	
APPEAL OF GEORGIA DIXON	)	No. 368 of 1977
	)	
	)	

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that Georgia Dixon, Petitioner/Appellant above named, hereby appeals to the Supreme Court of the United States from the judgment of the Supreme Court of Pennsylvania dated December 21, 1979, affirming the judgment of the Court of Common Pleas of Allegheny County, Orphans' Court Division, entered herein on January 11, 1979.

This appeal is taken pursuant to 28 U.S.C., § 1257(2).

s/ Joanne Ross Wilder
Joanne Ross Wilder, Esquire
Wilder & Miller, P.C.
Attorney for Petitioner/Appellant

Date Filed: March 17, 1980

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

IN RE: ADOPTION OF EMA
APPEAL OF
GEORGIA DIXON

No. 7 March Term, 1979

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that Georgia Dixon, the Appellant above named, hereby appeals to the Supreme Court of the United States from the judgment of the Pennsylvania Supreme Court entered December 21, 1979, affirming the judgment of the Court of Common Pleas of Allegheny County, Pennsylvania, entered on January 11, 1979.

This Appeal is taken pursuant to 28 U.S.C., § 1257(2).

s/Joanne Ross Wilder

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Date Filed: March 17, 1980